

No. 9/5/84-6 Lab./11046.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of M/s Vijay Steel Industries Industrial Estate, Ambala City, (ii) Ajay Steel Industries, Ambala Cantt:—

IN THE COURT OF SHRI V. P. CHAUDHARY,
PRESIDING OFFICER, LABOUR COURT,
AMBALA.

Reference No. 117 of 1984

(Old No. 27 of 1983)

SHRI OM PARKASH, WORKMAN AND THE
MANAGEMENT OF THE M/S. VIJAY STEEL
INDUSTRIES, INDUSTRIAL ESTATE,
AMBALA CITY. (II) AJAY STEEL
INDUSTRIES, AMBALA CANTT.

Present:

Shri J. R. Sharma, for workman.

Shri R. L. Chopra, for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of the powers conferred,—vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between Shri Om Parkash, workman and Messrs Vijay Steel Industries, etc., to Labour Court, Faridabad. The terms of reference are as under:

"Whether the termination of services of Shri Om Parkash was justified and in order? If not to what relief is he entitled to?"

On constitution of Labour Court at Ambala in April, 1984. This reference was received by transfer.

Shri Om Parkash, workman through his demand notice alleged that he joined employment of Messrs Vijay Steel Industries in Industrial Area, Ambala City in April, 1978 up to March, 1980 as a painter and then in April, 1980 up to March, 1981, he served Ajay Steel Industries, Ambala Cantt., as a painter and thus completed his services more than 240 days. He further alleged that his services were terminated by

the respondent-management with effect from 1st April, 1980, and 1st April, 1981, without any reason and in contravention of section 25 (F) of Industrial Disputes Act, 1947. So he has prayed for his re-instatement with continuity in service and with full back wages.

Respondent-management filed separate written statement both of them alleged that their firms are registered under the Shops and establishment Act, 1958, and are not covered under the provisions of Industrial Disputes Act, 1947. Accordingly, the reference is bad in law and not triable in the Labour Court. It was also contended that single statement of claim is also illegal. The workman should have filed separate statement of claim against both the managements it was also contended that statement of claim is not properly varified, as it is liable to be rejected on this very ground. Messrs Ajay Steel Industries alleged that workman joined in April, 1980 and served the respondent up to April, 1981. Thereafter, he absconded after taking an advance of Rs. 2,200/- thereafter the workman was asked to make payment of this money out of jealousy he filed demand notice.

Vijay Steel Industries contended that workman joined its service in April, 1978, and left in December, 1978 and again joined in May, 1979 and left his job in March, 1980 of his own, so it contended that the question of legal direction of service of workman does not arise.

On the pleadings of the parties the following issues have been framed:

ISSUES:

1. Whether termination of as alleged is according to law as per reference if not its effect? OPM
2. Whether the demand notice is not covered under the Shops and Establishment Act, 1958? OPM
3. Whether the notice is barred on account of laches? OPM
4. Whether reference is bad for misjoinder of necessary parties? OPM
5. Relief.

I have heard Authorised Representative of parties and have perused evidence present on the

file. My issue-wise findings are as under:

Before switching discussions on merit it would be beneficiary to mention here that at the time of arguments, Authorised Representative of workman made statement at the bar that he does not press claim of the workman against Vijay Steel Industries in other words respondent No. 1.

My findings will be only against respondent No. 2 that is Ajay Steel Industries.

ISSUE No. 1:

In support of this issue Shri Mela Ram, appeared as MW-1, he stated that workman remained in the employment of the respondent and then he left his job of his own he also stated that their firms is registered under the Shops Act, and this dispute is not covered under the Industrial Disputes Act, 1947. MW-2 also corroborated statement of MW-1.

Shri Om Parkash, workman stated that he did not know on what date he joined service of respondent Ajay Steel Industries and when he left his job. He further stated that in May 1981, he left the service of Messrs Ajay Steel Industries and joined service of Vijay Steel Industries. In cross-examination he stated when he left Vijay Steel Industries at that time he did not issue any demand notice and remained in the employment of Ajay Steel Industries and thereafter he left for Delhi. He further stated that did not know whether he signed statement of the claim or not.

In view of above evidence atleast one fact is clear that the workman did not state that his services were terminated but he stated that he had left his job.

When workman has himself admitted the fact that he has left his service in those circumstances termination of his services remains no longer. In these circumstances it is a case of abandonment of service and not a case of termination. Accordingly, I hold that when there is no termination so the reference could not have been made to this Court. But at the time of making the reference to the Labour Court it appears that either the management did not appear before the Government or it could not convince the Government about abandonment of service by the workman. So this issue is decided in favour of management against the workman.

ISSUE No. 2:

This dispute is not covered under the Industrial Disputes Act, 1947, because Ex-M-1 Photo

Stat Copy of registration of respondent management shows that the respondent management was registered under the Shop and Establishment Act, 1958. So the dispute is not covered under the Industrial Disputes Act, 1947, and workman was not entitled to submit his demand notice.

In 1981 LAB ICNOC pagt 47 Andhra Pradesh it was observed that where the management is registered under the Shops and Establishment Act, 1958, termination of service employee under section 40 of Shops and Establishment Act no, retrenchment compensation is payable to the workman by invoking section 25 (F) of the Industrial Disputes Act, 1947. So this issue is also decided against the workman in favour of, management.

ISSUE No 3:

In view of my findings on issue No. 2 issue No. 3 becomes redundant.

ISSUE No. 4:

The reference is also bad for misjoined of necessary parties. At arguments stage—Workman has waived his relief against Vijay Steel Industries and has simply pressed his claim against Ajay Steel Industries. This contention of workman clearly show that the reference is bad.

ISSUE No. 5:

Relief?

For the forging reasons on the basis of my issuewise findings. I reach at the conclusion that workman has quit his service of his own. Moreover this dispute is not covered under the Industrial Disputes Act, 1947, because the respondent management is registered under the Shops and Establishment Act, so workman is not entitled to any relief claimed for.

I pass my award regarding the dispute in hand accordingly.

Dated the 25th November, 1985.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.

Endorsement No 2926, dated the 29th November, 1985.

Forwarded (Four Copies) to the Financial Commissioner, and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 25th November, 1985.

V. P. CHAUDHARY,

Presiding Officer,

Labour Court, Ambala.